

**Office Action Summary****Application No.**

10/589,674

**Applicant(s)**

MATUSCHKA-GREIFFENCLAU ET AL.

**Examiner**

SHERIDAN MACAULEY

**Art Unit**

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A response and amendment were received and entered on May 17, 2011 and March 5, 2011. All evidence and arguments have been fully considered. Claims 1-18 are pending. Claims 1-17 are withdrawn from further consideration due to a previous requirement for restriction. Claim 18 is examined on the merits in this Office action.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2011 has been entered.

#### ***Claim Rejections - 35 USC § 112***

1. Rejections under 35 USC 112 have been withdrawn due to amendment.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Moldowan et al. (US 4,496,548), Langeland (US 2005/0019427), Livingston (US 5,475,031), Horrobin (GB 2118437) and Mansouri et al. (The Journal of Pharmacology and Experimental Therapies, 298: 737-743). The claim recites a method of affecting ethanol metabolism in a human comprising administering to a subject the food composition for dietary supplementation comprising the following substances in physiologically relevant amounts: dextrose, vitamin C, L-glutamine, cysteine, riboflavin,

succinic and/or fumaric acid, and coenzyme Q10, wherein said method has the following effects in the human: reducing ethanol and acetaldehyde in humans.

6. Moldowan teaches a method for affecting alcohol metabolism in a human body comprising administering a supplement comprising cysteine and vitamin C (as ascorbic acid; abstract).
7. Langeland teaches a method for affecting alcohol metabolism in a human body (by accelerating degradation of alcohol and acetaldehyde) comprising administering a supplement comprising dextrose (as glucose), vitamin C, cysteine and riboflavin (abstract, col. 5, table 1).
8. Livingston teaches a method for affecting alcohol metabolism in a human body comprising administering a supplement comprising succinic acid (abstract, col. 1, p. 27-32). The reference teaches that succinic acid may be used in a composition to reduce the effects of alcohol on the body (col. 1, p. 27-32).
9. Horrobin teaches a method for affecting alcohol metabolism in a human body comprising administering a supplement comprising succinic acid (abstract, p. 2, lines 48-58). Horrobin teaches that glutamine may be used in a composition to ameliorate the adverse effects of alcohol on the body (p. 2, lines 48-58).
10. Mansouri teaches a method for affecting alcohol metabolism in the body (by preventing oxidative damage in the liver) in a subject by administering coenzyme Q10 (abstract, p. 740, table 2). The reference teaches that the composition can be used in humans in a method to reduce the adverse effects of alcohol on the body (abstract, p. 742, par. 2).

11. Although none of the reference specifically teaches a method of affecting alcohol metabolism by administering a composition comprising all of the elements recited in the instant claims, each of the references teaches methods whereby alcohol metabolism may be affected in a human by administering various components of the composition recited in the claims. One of ordinary skill in the art would have been motivated at the time of the invention to combine all of the components taught by the prior art into a single composition for use in a method of affecting alcohol metabolism because the components are all known to be useful in methods for the same purpose and thus are considered to be known equivalents in the art. It is prima facie obviousness to combine compositions into a single composition when each of the compositions is taught by the prior art to be useful for the same purpose (see MPEP 244.06). Furthermore, one of ordinary skill in the art would have been motivated to combine each of these components into a single method of affecting alcohol metabolism because the combination of a number of components that are known to be useful for this person was known in the art at the time of the invention, as disclosed in each of the cited references. One of ordinary skill in the art would have had a reasonable expectation of success in doing so because the combination of supplements for the administration to humans was well-known at the time of the invention. Furthermore, since the references teach that some of the components affect alcohol metabolism by reducing ethanol and acetaldehyde in the human (as is disclosed by Langeland, for example), the combined method of the prior art would perform the functions recited in the instant claims. It would

therefore have been obvious to one of ordinary skill in the art to combine the teachings discussed above to arrive at the claimed invention.

12. Thus, the claimed invention as a whole was *prima facie* obvious over the combined teachings of the prior art.

### ***Response to Arguments***

13. Applicant's arguments with respect to the rejections made in the previous Office action have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHERIDAN MACAULEY whose telephone number is (571)270-3056. The examiner can normally be reached on Mon-Thurs, 7:30AM-5:00PM EST, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sue Liu can be reached on (571) 272-5539. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM  
/Ruth A. Davis/  
Primary Examiner, Art Unit 1651